IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

RCRev..No. 428 of 2006()

RCA.51/2003 of II ADDL. DISTRICT COURT, TRIVANDRUM
RCP.8/2003 of RENT CONTROL COURT, TRIVANDRUM
.....

REVISION PETITIONER/COUNTER PETITIONER-APPELLANT

M.SHANKAR MOHAN,
S/O.P.MAHADEVAN, T.C.11/1616,
KESTON ROAD, KOWDIAR P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.C.K.THANU PILLAI
SRI.S.S.HUSSAIN
SMT. A. MEENA
SRI.T.K.SHAIJU RAJ

RESPONDENTS: PETITIONER

MARIAMMA ZACHARIA, W/O.K.O.ZACHARIA,
KRIPA, T.C.11/403, DEVASWOM BOARD JN., NANTHANCODE
P.O., THIRUVANANTHAPURAM, NOW RESIDING AT. BAHARIM,
P.O.BOX NO.801, MANAMA, BAHARIN,
REPRESENTED BY HER POWER OF ATTORNEY HOLDER,
P.C.ISSAC, S/O.LATE M.C.CHACKO,
KRIPA, T.C.NO.11/403, DEVASWOM BOARD JN.,
THIRUVANANTHAPURAM.

BY /

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 12/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.A. ABDUL GAFOOR & K.R. UDAYABHANU, JJ

R.C.R. No. 428 OF 2006

Dated this the 12th day of December 2006

ORDER

Udayabhanu, J

The writ petitioner is the tenant who is under orders of eviction under sections 11(3) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act. The appellate authority had reversed the finding of the Rent Control Court under section 11(3) and confirmed the finding under section 11(4)(v). It is the case of the tenant/Revision Petitioner that his mother is running business in the premises and hence there is no cessassion of occupation for the statutory period and further that there is no bona fides in the claim of the land lord as she is living at Bahrain for the last several years and that her husband is employed at Bahrain. It is also pointed out that the petition schedule building is a very old one and needs complete reconstruction for starting a business in software development etc. According to the Revision Petitioner, the tenant is his mother although the rent deed was in

the name of the Revision Petitioner. Subsequently, his mother had attorned with the landlord and it is his mother who is paying rent and conducting the business in the premises. The findings of the appellate authority under section 11(3) is illegal. The Revision Petitioner has relied on the decision reported in **Ratheesh Kumar v. Jithendra Kumar** (2005(2) KLT 669 and **Joseph Mathew v. Jose Thomas** (2005 (4) KLT 764 (SC) that the general power of attorney holder cannot depose as a witness on behalf of a person who is in need of starting a business.

2. In the instant case we find that the appellate authority has found that the land lord could not testify on account of her inability as she could not get the flight ticket for the particular day and the court did not allow the adjournment. All the same we find that the decision of the appellate authority under section 11(3) is not to be relied on for the purpose of the disposal of the revision petition. We find that findings under section 11(4) (v) of the act is concurrent.

3. So far as the finding under section 11(4)(v) is concerned, the contention that the mother of the petitioner ought to have been impleaded as she is the real tenant stands belied

on the basis of the evidence adduced and documents produced as noted by the courts below. A2, rental agreement, dated 15.07.71 is in between the original land lord and the Revision Petitioner herein as per which the premises was taken on the rent at the rate of Rs. 18 by the Revision Petitioner. The arrangement continued with the assignee landlord. It is the evidence that the rent was paid by the revision petitioner. According to him, the same was done at the instance of his mother which is not supported by any evidence adduced in the matter. It is to be noted that the petitioner's mother was not examined also. It has came out in evidence that the petitioner's mother is aged 80 years and now bed ridden. The contention that the mother of the petitioner is occupying the premises was also found not established and rightly so. The commissioner who inspected the premises has reported that no evidence of occupation could be found in the premises. It is further noted by the courts below that CW1, the Revision Petitioner had admitted that he is not doing any business in the premises from 1972 onwards. The commissioner inspected the premises twice. The Commissioner was examined as PW3. He did not find any equipment in the

petition schedule premises. There was only empty switch boards etc. found inside the building. It was also reported by the commissioner that it appeared that the premises was not occupied for a considerable period. In the light of the above, we find no reason to interfere with the concurrent finding of the courts below under section 11(4)(v).

In the result the Revision Petition is dismissed in limine.

K.A. ABDUL GAFOOR, JUDGE

K.R. UDAYABHANU, JUDGE.

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